

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

D.H. PACE COMPANY, INC.,)
)
Plaintiff,)
v.) CIVIL ACTION
) FILE NO. 1:22-CV-01005-SEG
MATTHEW JOHNSON et al.,)
)
Defendants.) TELEPHONE CONFERENCE

BEFORE THE HONORABLE SARAH E. GERAGHTY
TRANSCRIPT OF PROCEEDINGS
JUNE 6, 2022

APPEARANCES:

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and computer-aided transcript produced by*

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Monday Afternoon Session

June 6, 2022

3:30 p.m.

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P R O C E E D I N G S

COURTROOM DEPUTY: Thank you. Looks like we have everybody on the call. I want to thank everybody for joining this telephone conference this afternoon for civil action D.H. Pace Company, Inc. v. Johnson et al., Case No. 22-CV-1005. Attorneys for the plaintiff, who will be doing the majority of your speaking today?

MR. LaBRIOLA: I will. This is Steve LaBriola.

COURTROOM DEPUTY: Thank you, sir. And for the defendants?

MR. CARTWRIGHT: It will be Mr. Cartwright today.

COURTROOM DEPUTY: Thank you both. So before we begin I just want to remind counsel please announce your name before speaking so the record is clear. Plaintiffs, are you ready to begin?

MR. LaBRIOLA: Yeah.

COURTROOM DEPUTY: Defendants?

MR. CARTWRIGHT: Yes.

COURTROOM DEPUTY: Defendants?

MR. CARTWRIGHT: Yes.

MR. ROBERTS: Yes. Sorry. Yes.

1 COURTROOM DEPUTY: You're now on the line with Judge
2 Geraghty.

3 THE COURT: Good afternoon, counsel. This is Sarah
4 Geraghty. It's good to meet you all by telephone.

5 You'll have seen that a TRO was issued on Friday. At
6 the end of that order, I invited the parties to let us know if
7 you wanted a conference to discuss scheduling and discovery.
8 But as I thought about it over the weekend and about the
9 expedited discovery request in particular, it seemed more
10 prudent to affirmatively schedule a call so that everyone can
11 be on the same page about the things that will need to be done
12 in advance of what I understand will be a preliminary
13 injunction hearing.

14 I understand from the most recent filings that
15 plaintiff would like a preliminary injunction hearing within
16 14 days of the date of a TRO. We can accommodate that
17 schedule. I further understand that lead counsel for the
18 plaintiff has a trip to visit his son who is stationed
19 overseas, and we will certainly accommodate that request.

20 I believe there's good cause here to permit expedited
21 discovery in this case, and I'll issue a written order to that
22 effect by tomorrow. But I wanted to seek the parties' input
23 in a few areas. I've read plaintiff's notice, Document 55,
24 and defendants' response. And before I go on I wanted to ask
25 each side, starting with Mr. LaBriola, whether there have been

1 further discussions since last week about written discovery,
2 the ESI Protocol, the requested depositions or anything else I
3 should know about before we get into the specifics of the
4 discovery -- expedited discovery request. And so just put
5 another way, it would be helpful for me to know if the parties
6 still seek a ruling on those three topics, depositions,
7 written discovery, and Section 7(f) of the ESI Protocol.

8 I have one in mind for each, but I don't want to
9 impose if you all have been able to agree. So, Mr. LaBriola,
10 if I may hear from you, please.

11 MR. LaBRIOLA: Sure. Thank you, Judge, and pardon my
12 voice. I am now sounding probably a little head congested. I
13 learned on Friday that I had contracted Covid. I've been
14 double vaccinated and double boosted, but nevertheless it
15 found me. So if I sound a little bit --

16 THE COURT: I'm sorry to interrupt, and I'm sorry to
17 hear that, Mr. LaBriola. I have just been through it myself,
18 and it's no fun.

19 MR. LaBRIOLA: No, it's not, but I'm glad that I was
20 vaccinated. It's been mild symptoms so notwithstanding how I
21 sound.

22 Judge, we have had discussions. Mr. Cartwright and I
23 have probably had four or five discussions today, and we have
24 had discussions back and forth with our clients on several
25 issues, including settlements. And we are trying to see if

1 there are advancements that can be made in that regard.

2 But we have also discussed the ESI, and we have
3 recently sent to him a proposed supplement to ESI. The ESI
4 Protocol that you had received dealt with expedited discovery
5 of looking only at confidential information. From the Court's
6 order on Friday, it certainly appears to us that should there
7 be additional discovery as it relates to Liberty's conduct
8 prior to -- well, I guess just Liberty's conduct at large,
9 that that may have relevance as to the extension of a
10 preliminary injunction as it might relate to Liberty. And so
11 we had sent over a proposed ESI Protocol.

12 I just had a conversation with Mr. Wainwright (sic)
13 about 10 minutes before we got on the call. And we had come
14 to a point where we thought perhaps we could reach some
15 resolution on those final points, but we needed to run it past
16 our clients and just didn't have enough time before getting on
17 the call here. And I would just say from a big picture
18 standpoint, I don't think the defense has objection to
19 expedited discovery. It's just the nature of what expedited
20 means because it starts putting a lot of pressure on all of us
21 to try and do things and do it competently, and that's really,
22 I think, the thrust and the difficulty here.

23 There also was some discussion about would it be
24 possible to enter some form of order that could extend the TRO
25 so that the parties could engage in more thoughtful discovery

1 and then hold a hearing afterwards, and I think that the
2 biggest hurdle is in the interpretation perhaps of your
3 Honor's order. The focus on acquired and interest in it has
4 led to the thoughts on the defense side that if Mr. Johnson
5 simply gives up his ownership interest, then he can continue
6 to work for Liberty. And, of course, that gives some real
7 consternation to my clients, and that specific statement, you
8 know, is not set forth in the Court's order.

9 And so that's one of the issues that we're looking at
10 is, well, that makes it very difficult for my client to say
11 yes to if indeed that's the position that the defense is
12 planning to take.

13 So at large that's kind of the big picture. We
14 should have a supplement for the Court on ESI. The nature of
15 the supplement is really just to deal with the discovery ESI
16 as it relates to all of the issues in the case, not just the
17 confidential information.

18 MR. CARTWRIGHT: Your Honor, if I may -- this is
19 Mr. Cartwright.

20 THE COURT: Yes. Please do.

21 MR. CARTWRIGHT: -- whenever Mr. LaBriola is done?

22 THE COURT: Yes. Thank you, Mr. LaBriola.
23 Mr. Cartwright?

24 MR. CARTWRIGHT: Yes, your Honor. Just to kind of
25 follow up on what Mr. LaBriola said, you know, and as I hope

1 that we've made clear in our response brief and as we intended
2 to make clear and did, I think, at the additional hearing,
3 we're not opposed in theory to some form of expedited
4 discovery, particularly as it relates to the trade secret
5 information. We've been trying to be as open as possible with
6 that.

7 I was actually at my client's facility this morning
8 where we began imaging their -- where a tech paid by -- tech,
9 you know, retained by D.H. Pace was there starting the imaging
10 process of all of the devices and accounts and will continue
11 to work through that with them. We're not trying to slow it,
12 but there is obviously pause on our part of trying to be
13 competent when we are reviewing documents in what expedited
14 discovery means.

15 And I second what Mr. LaBriola said about, you know,
16 finding a way that maybe makes the most sense for both parties
17 to extend the TRO as it's entered. I would only slightly take
18 umbrage with his suggestion that this is -- that our
19 interpretation of whether Mr. Johnson can continue to work is
20 our interpretation alone when it is actually the argument that
21 they made to this Court when they said that any other --
22 would, quote, be an illogical interpretation that ignores the
23 plain meaning of the provision. Simply the covenant prohibits
24 Johnson from owning a percentage of a direct competitor
25 regardless of the title bestowed upon them. That was their

1 language in their brief on page 37.

2 COURT REPORTER: Can he speak a little slower so I
3 can -- his words are cutting off.

4 THE COURT: Excuse me, Mr. Cartwright. I apologize
5 for interrupting. We are having a bit of interference from a
6 storm here, and our court reporter has asked if you would be
7 so kind as to speak just a little more slowly so she can take
8 down everything.

9 MR. CARTWRIGHT: And I'm not sure it does not
10 surprise your Honor or anyone else on this call that's not the
11 first time I've been asked to speak a little slower during a
12 hearing. I will do my best, and my apologizes for prior
13 issues.

14 THE COURT: No problem, no problem. Was there
15 anything else that you wanted to add, Mr. Cartwright?

16 MR. CARTWRIGHT: I don't believe so, other than to
17 say that, you know, we are very willing to be as reasonable as
18 we can be in conducting expedited discovery and particularly
19 as it relates to ESI. We're trying to be as open and as
20 cooperative as we possibly can be. We are cautious of, you
21 know, 24-hour type deadlines just because that places a
22 practical issue on whether we can competently review documents
23 and produce and serve our client's interest. And that
24 certainly is more on us than them, and so we are cognitive of
25 those types of turnaround. But, generally speaking, we're

1 more than open to engage cooperatively in discovery at their
2 quickened pace.

3 THE COURT: Okay. Understood. Thank you both. So I
4 had been working on an assumption that the plaintiff wanted to
5 have the preliminary injunction hearing within 14 days. I am
6 now hearing from both sides, as I understand it, that you are
7 open to -- I'm sorry? Did someone say something? No. Okay.
8 I'm now understanding that both sides are open to extending
9 the TRO and to possibly having the hearing at a later time.
10 I'm open to that too if that's what suits the parties' needs.

11 It does sound like it makes sense for me to go
12 through some of these requests for expedited discovery, and so
13 I'll do that now starting with the request for four
14 depositions. And if you all will feel free to chime in and
15 let me know if there are things that you've already talked
16 about that are moot. But as I understand it, we have four
17 depositions on the table, the two Mr. Johnsons, Mr. Hussein,
18 and a bank representative. And there was a request by
19 plaintiff that these depositions occur between June 9th and
20 June 15th.

21 I am going to ask the parties to confer and to find a
22 mutually convenient time on or before June 15th for the
23 depositions of Craig Johnson, Matthew Johnson, and
24 Mr. Hussein. I think the efficient resolution of the
25 preliminary injunction proceeding and the case would be served

1 by depositions that permit inquiry into the breach of contract
2 and the trade secret and the tortious interference claims.
3 And it seems to me that expedited discovery and depositions in
4 particular will facilitate the presentation of evidence at
5 this upcoming preliminary injunction hearing.

6 I wanted to ask about the deposition of the bank
7 witness, Mr. LaBriola. I don't love the idea of requiring a
8 nonparty and a nonemployee to sit for a deposition with just a
9 little bit of notice. Can you give me a sense of what your --
10 perhaps there are plans already in place regarding this
11 deposition. Can you speak a little bit about this bank
12 representative deposition, please.

13 MR. LaBRIOLA: Sure, Judge. My understanding is that
14 the SBA loan application is actually a very involved process
15 that includes the submission of a marketing plan and marketing
16 data and information that is not simply just saying what are
17 my thoughts on what I want to do and move forward. So the
18 documents may end up speaking for themselves, and it may be
19 the kind of information that I can then just simply ask Craig
20 Johnson about, who I believe would have been the person who
21 signed and submitted it.

22 But to the extent, you know, that there is somebody
23 who needs to say what is in the SBA loan application and why
24 is it there and what its purpose is, I think that would likely
25 come from the bank rather than from Mr. Johnson. So it's

1 really that focus, and it is our client's belief that if
2 confidential information was used, it may have very well been
3 used during that SBA loan application process.

4 THE COURT: Okay. Mr. Cartwright, anything you'd
5 like to say regarding the depositions?

6 MR. CARTWRIGHT: Just a couple of points, your Honor.
7 First, as you noted, the bank is a completely nonparty. We
8 have no authority or ability to produce them, so any sort of
9 order we would ask not to require us to make them available
10 because we just don't have that ability to do that.

11 As to your Honor's indication that she will be making
12 three people available in the shortened time, I would ask for
13 clarity as to the scope of that deposition. I'm hesitant and
14 do not think that the case demands that my client be put up
15 for deposition multiple times and then subject to seven-hour
16 depositions, you know, and giving Mr. LaBriola two bites of
17 the apple, so to speak.

18 So I would either ask that it be clear that this is
19 their one and only deposition or it be limited to an hour or
20 something of that nature to make sure that it is a focused
21 deposition about the preliminary injunction and not a
22 wide-ranging deposition. If we could just get some clarity at
23 the front end of that, I think that would be helpful so as not
24 to be in the middle of a deposition again trying to talk
25 with -- trying to contact the Court for clarification.

1 THE COURT: Yeah. Sure thing.

2 MR. LaBRIOLA: And, Judge, this is Pete LaBriola. I
3 don't have a problem with, say, maybe limiting it to two
4 hours. I'm pretty efficient because attorneys on the other
5 side will hear, and I certainly do think that I should not --
6 this should not be my one and only opportunity because, again,
7 we're going to be drinking from a firehose with regard to
8 discovery. And I'm sure there will be additional documents
9 and information coming to us after this deposition.

10 THE COURT: Okay.

11 MR. CARTWRIGHT: Your Honor, my only comment on that,
12 as to the firehose that they're turning on, we're happy to
13 make it be a regular faucet.

14 THE COURT: Okay. So here's what I'd like for you
15 all to do on the depositions: I think that the two-hour limit
16 is extremely reasonable. I am not going to limit the scope of
17 the expedited depositions. This is a case in which many of
18 the factual and legal issues are intertwined, and it would be
19 helpful to me to have some additional information about the
20 breach of contract, the trade secrets, and the tortious
21 interference claims in deciding a fair resolution of the case.
22 So I'm not going to limit the scope.

23 I will say -- and it sounds like, based upon
24 Mr. LaBriola's comment that he's an efficient deposition
25 taker, you know, speaking very generally it's my experience

1 that it is the rare case in which one person's deposition
2 really needs to exceed the generous seven hours permitted by
3 the rules. So I would just sort of make that observation as a
4 general matter. But, yes, plaintiff can have two hours
5 deposition for Mr. Johnson, Mr. Craig Johnson, Matthew
6 Johnson, Mr. Hussein.

7 Mr. LaBriola, I'm not going to grant the request at
8 the moment as to the bank representative, but if it turns out
9 that you take these depositions and you find that you need
10 further information, I'd ask you to so notify the Court at
11 that time. Okay. I believe that that takes care of the
12 depositions.

13 Okay. So moving on to the written discovery,
14 plaintiffs seek, as I understand it, a combined 16
15 interrogatories, 59 requests for production, and 76 requests
16 for admission. Those requests were all served on May 20th.
17 They would otherwise be due on June 23rd, and D.H. Pace would
18 like the responses a lot sooner. And so I just want to make
19 sure. This is something, Mr. LaBriola, you still need a
20 ruling on; is that right? Anything I need to know before I
21 give you my ruling on this piece?

22 MR. LaBRIOLA: No. I don't think so. I think the
23 requests were pretty straightforward, and the defense has had
24 them for a long time.

25 THE COURT: Okay. So --

1 MR. CARTWRIGHT: Your Honor?

2 THE COURT: Yes. Go ahead.

3 MR. CARTWRIGHT: Sorry. If I can just be -- you
4 know, there's only so many hours in a day, and so between ESI
5 Protocol, the scheduling and anticipation of these depositions
6 and the upcoming hearing that we seem headed towards, you
7 know, under normal circumstances I would probably be reaching
8 out for the professional courtesy of an extension on time to
9 respond to these. So shortening my time, I think, is just not
10 a reasonable demand, especially given all of the other
11 information that we are providing to D.H. Pace in this matter.
12 And I don't think it prohibits them or stops them from being
13 able to prepare for their depositions or prepare for the
14 hearing.

15 THE COURT: Okay. I hear that defendants are
16 concerned about this number of requests on such an expedited
17 schedule, and I think the concern is reasonable. I'm going to
18 suggest a sort of split-the-baby approach here. So I'm going
19 to ask counsel for plaintiff to please pick your ten most
20 important interrogatories, your 20 most important requests for
21 production, your 20 most important requests for admission.
22 And I'm going to direct the defendants -- and to provide that
23 information by -- let's see, it's the end of the day -- to
24 provide that information by noon tomorrow. And then --

25 MR. CARTWRIGHT: By the --

1 THE COURT: Sorry. Go ahead.

2 MR. CARTWRIGHT: Sorry, your Honor. It will be our
3 responsibility to provide that information by end of day
4 tomorrow?

5 THE COURT: No, no. No, no. I'm sorry. I'm sorry.
6 What I'm saying is that Mr. LaBriola picks his ten -- the
7 interrogatories that he is most concerned about, 10 of them;
8 20 for the requests for production; 20 for the requests for
9 admission; and that he provides that information to you,
10 Mr. Cartwright, by tomorrow at noon.

11 And then as far as the deadline for, Mr. Cartwright,
12 for the defendants to respond, I'm going to give the response
13 date of June the 10th, and I do that with some reservation
14 because I know there are a lot of -- that's a short deadline.
15 But I do that deadline because I understand that you've had
16 the request since May 20th and I'm kind of -- I'm trying to
17 leave open right now the possibility that the case will go to
18 a preliminary injunction hearing by at the latest the 17th of
19 June. So I'm looking at that kind of short deadline.

20 If it turns out that you all have some subsequent
21 conversations after our conference today and you decide that
22 you want to move out the prelim -- extend the TRO and move out
23 the preliminary injunction hearing, that may change things.
24 For now that's the schedule that I think makes sense in light
25 of the current request for preliminary injunction hearing by

1 the 17th of June.

2 Okay. So next, the next item on my list was the ESI
3 Protocol. I understand from Mr. LaBriola that there have been
4 some discussions on this score as recently as today. The
5 plaintiff asked in its notice about an order requiring
6 defendants to comply with the first step of the ESI Protocol
7 B1. Mr. LaBriola, has that step already been accomplished?

8 MR. LaBRIOLA: I believe that has. Craig, I think
9 you said the people from our forensics side were at -- not
10 Craig, Wayne, were at your client's office today and that that
11 was accomplished?

12 MR. CARTWRIGHT: So, your Honor, just in full
13 disclosure, I believe that provision requires us to sign under
14 oath that this is the complete list. We have not prepared
15 something under oath. We have made our devices available and
16 are working on making all of our accounts available. We have
17 all intentions of doing that under oath, but just from a
18 practical standpoint and given faulty memories, I have not
19 asked my clients to sign something under oath that I don't
20 know really moves the ball forward that much for them at this
21 stage.

22 And I would ask that the Court not require that just
23 because I don't want to -- we're not trying to hide anything,
24 but I don't want to have left off one thing, and suddenly my
25 clients have inadvertently signed a list of devices and

1 accounts and left off something and they signed it under oath
2 saying they'd give it.

3 We're being very open and have made devices. Two of
4 the devices went home this afternoon. For more color on this,
5 the client's facility lost power today, which, you know, just
6 happened. It was an area-wide outage for about six hours this
7 morning, so there's going to have to be continued gathering
8 tomorrow that we've agreed to and are working with with the IT
9 person.

10 And I only mention that because the more we talk
11 about 24-hour deadlines and seven -- and 48-hour deadlines
12 that -- just the practicality of what can happen and arise in
13 between those times without any malice or any attempts to
14 delay are very large, and so I urge the Court to restrain from
15 confining us to those as much as possible. But I do
16 understand that we're on an expedited schedule, and so I get
17 the Court's point, just that's our hesitation. It's not that
18 we don't want to provide the documents, we don't want to work
19 hard. It's just we don't want to be in a situation where for
20 circumstances outside of our ability, we can't fulfill our
21 obligation.

22 THE COURT: I understand and respect that.
23 Mr. LaBriola?

24 MR. LaBRIOLA: Judge, I was just going to note,
25 first, I appreciate that. I was -- assume that we actually

1 were performing Step 2 today rather than Step 1, but Step 1 is
2 a very important step for us on having really the devices that
3 are being made available, the social media, the identification
4 of email accounts, including gmail, just to certify that those
5 are all of the items that were used since January 1 of 2021 so
6 that we don't find out down the road, oh, I had a Yahoo
7 account or I had an AOL or I had an iCloud account or
8 something else that if you had just simply asked for, we would
9 have made it available. So that really was an important part
10 of Step 1.

11 So, again, you know, we needed -- before certainly
12 everybody goes through and reviews everything we want to make
13 sure we have the universe to know what it is.

14 MR. CARTWRIGHT: And, your Honor, if I could
15 piggyback off of Mr. LaBriola, before any review starts I'm
16 happy to have them execute the affidavit. My only concern is
17 that, you know, this evening they tell me about another vendor
18 list that they -- another vendor account. And it's not a
19 situation where I think Mr. LaBriola needs to be concerned --
20 and I think he will attest to this -- where we are not being
21 open about everything we have. I hope that my prior answer to
22 identifying what this particular provision was, is about that.

23 I mean, we are being extraordinarily open with the
24 other side as to the universe that exists out there and doing
25 our best to make sure it's off record. I just don't want to

1 create a document that my client has to execute in a shortened
2 time frame that I don't think is necessary.

3 THE COURT: Okay. Thank you, Mr. Cartwright.
4 When -- can you suggest a more reasonable time frame in which
5 you can fulfill -- in which you can have your clients make the
6 certification under oath?

7 MR. CARTWRIGHT: Sure. I mean, I think by the end of
8 this week or at the -- I mean, they're going to testify to it,
9 I presume, not to guess work product, Mr. LaBriola's. But I
10 assume that the deposition will inquire about these things.
11 So it's not a thought that we won't at some point testify
12 under oath about this. It's purely just a practicality
13 situation. So, you know, if we could have until Friday, at
14 which point I would assume that all the devices will have been
15 gathered, imaged, and we'll probably have even started our
16 preliminary search term runs on it, that would be my request.

17 THE COURT: Okay. I'm going to direct -- in that
18 case I'm going to direct the defendants to comply with
19 paragraph B1 of the ESI Protocol by Friday, the 10th, at noon.

20 Okay. There was one other piece of the ESI Protocol
21 that factored into plaintiff's notice.

22 MR. LaBRIOLA: That's correct. Right.

23 THE COURT: Plaintiff wanted disclosure of items in
24 paragraph 7F, as in Frank, within 24 hours. And this is one
25 in which I wanted to ask for some clarification from the

1 parties. Is this 7F step in play for purposes of the
2 anticipated preliminary injunction hearing? And I ask because
3 I note that under paragraph 7E the investigator does not make
4 their list until four weeks after the forensic exam, so I'm
5 not sure I follow the deadlines here. Mr. LaBriola, can you
6 shed some light?

7 MR. LaBRIOLA: Judge, you've correctly identified the
8 issue. I think this originally was being designed for
9 purposes of being a living document that could work throughout
10 the entire case but -- and originally this document was
11 drafted so that it dealt not just with confidential
12 information but with all documents, so, you know, emails that
13 relate to communications that were pertaining to things other
14 than the trade secret information of my clients.

15 And so it originally was to run both ways, and then
16 as we -- after we'd come to a consensus on it and we then were
17 looking at complying on your order to provide notification
18 with specificity as to ESI discovery necessary for the
19 preliminary injunction hearing, it became obvious that those
20 dates -- those time periods did make sense and they needed to
21 be moved forward.

22 So we sat down, talked with the forensic
23 investigator, and looked and said, gosh, what do we need to do
24 to try and make this work? And that's how those other dates
25 that you have and should be in the notice filed on -- in

1 Document 55 set forth earlier time periods. And I'm now
2 trying to turn to see if we had created a problem on that
3 particular date.

4 MR. CARTWRIGHT: Your Honor, if I could just
5 interject here --

6 THE COURT: Please.

7 MR. CARTWRIGHT: -- the ESI Protocol, as Mr. LaBriola
8 suggested to be a living document, but we were trying to be
9 expeditious with this. And I think that in many ways the
10 dates and time frames that are here reflect just a practical
11 time period that it requires to do discovery in this type of
12 case. And so I don't think that they should be ignored, and I
13 do think that your Honor accurately identified something as to
14 an issue with the way it was set up. But it's because the
15 dates and the time frames in there were deemed quick but not
16 at a speed that makes it impossible to reply.

17 So I would just like to group thoughts of expedition
18 off of these dates and times of review because I think that
19 they are reasonable and not designed to delay or make it
20 harder to proceed with discovery.

21 THE COURT: Okay. Thank you. In that case I'm not
22 going to order the request that plaintiff sought in Document
23 55 with respect to paragraph 7F, but it sounds like there are
24 some discussions in the works between the parties on a revised
25 ESI Protocol. And if you all need to have further discussions

1 about that, I am available and you just -- all you need to do
2 is contact Ms. Pittman, and we can have another phone
3 conference if that's helpful.

4 MR. CARTWRIGHT: Sure.

5 MR. LaBRIOLA: Yeah, thank you, Judge. We'll put it
6 on the list to discuss E and F and some of the other dates and
7 see what we can work through.

8 THE COURT: Okay. That sounds good. Just a few,
9 from my perspective, a few other things. I understand from
10 the beginning of the telephone call, that there's some
11 discussion between the parties about the order of the TRO and
12 its discussion of the acquired and interest language. On that
13 I do not want to give any rulings on that by telephone. If
14 you all feel like you need to -- if one party or the other
15 decides that clarification is needed, I'm going to ask you to
16 put that in a motion. I think that will be the better way to
17 address it.

18 And then should you -- I wanted to ask you all
19 whether you had a preference about whether the preliminary
20 injunction hearing will be in person or by Zoom. I honestly
21 have no preference. You don't have to tell me now, but at
22 some point Ms. Pittman will need to get it scheduled and need
23 to know how you all want to appear.

24 Mr. LaBriola, any thoughts on that or do you want to
25 just wait and let Ms. Pittman know at a later date?

1 MR. LaBRIOLA: Well, I know that Mr. Roberts actually
2 lives in Florida, and he has asked in the past if Zoom could
3 be done. And Judge Boulee had us come in person on one, and
4 then the chief magistrate court Judge Vineyard had us come in
5 person. And I think in that instance it was important to have
6 the parties there in person. But given that I'm sitting at
7 home under a Covid quarantine, I certainly have done them both
8 ways, and I can go however the Court would like.

9 MR. ROBERTS: Your Honor, this is Dave Roberts, if
10 could speak. And, first, Steve, I appreciate that. I think
11 that would be our preference, your Honor. Not only am I a
12 firm that's located in Atlanta, I run our Florida operations.
13 But we have a trial set that's coming up in the Northern
14 District of Florida, and that would make life tremendously
15 more easy for me. So I appreciate Mr. LaBriola suggesting
16 that, and I think from our side if the Court were so inclined,
17 having a Zoom hearing would be great.

18 THE COURT: Okay. I have no problem with it. That
19 sounds fine.

20 I think I've come to the -- yes, Mr. LaBriola?

21 MR. LaBRIOLA: Sorry, Judge. I was just going to
22 throw out, before you set a date and time, just one final
23 request. On the 17th at 9:45 in the evening is when my flight
24 leaves Atlanta, and so if the Court is scheduling it on the
25 17th, if it could just be done early enough so in the event

1 the hearing runs a little bit late, I still have time to catch
2 a plane, that would be terrific.

3 THE COURT: Certainly. And you said, sorry, the --
4 you said 9:45 p.m. Is that correct?

5 MR. LaBRIOLA: P.M., correct, yes. It's one of those
6 overnight flights.

7 THE COURT: All right. So I guess before we set a
8 hearing I was going to give you all the opportunity to
9 discuss, after this call, whether you want to -- I guess I
10 need some -- I need some clarification on whether -- and you
11 can tell me now or you can take some time to talk about it
12 amongst yourselves. But I was hearing at the beginning of the
13 hearing that there was some discussion about potentially
14 having this hearing not within 14 days but at a later time.
15 Perhaps what would be helpful is we can give you a date now,
16 and then if you come back to us and say you've spoken and you
17 think you can move this on to another -- a later date, that
18 would be fine.

19 MR. LaBRIOLA: That would be my preference, your
20 Honor.

21 THE COURT: Okay. All right. And, Mr. Cartwright or
22 Mr. Roberts, does that sound like --

23 MR. CARTWRIGHT: I think that is fine. I would like
24 to ask, your Honor, if in the event that we are able to work
25 out an extension of the TRO that puts this hearing not at such

1 a quick pace, if the parties could also be allowed to engage
2 in a reworking of the deadlines for the discovery and submit
3 that as well, not to second guess your Honor's decisions or
4 ask for her to overrule or anything like that, just
5 recognizing that the practicalities for why these deadlines
6 have to be so short is because we're about to have a hearing,
7 and then if we extend the hearing, then it may make -- it
8 would be easier on everyone if the deadline was not so
9 compressed and if your Honor would be okay with us resetting
10 those deadlines as well.

11 THE COURT: You all are experienced counsel, and I
12 would ask that you have, you know, good faith discussions to
13 see what you can work out in the event that the preliminary
14 injunction hearing takes place past the 14-day window. If
15 there are disagreements about that, as noted earlier, you can
16 just let Ms. Pittman know, and we can get back on the phone.

17 Okay. Anything else from the plaintiff's side before
18 we adjourn for -- oh, sorry. I forgot something. What I'm
19 going to do is I'm going to ask Ms. Pittman to reach -- I just
20 want to, instead of just setting a hearing right now,
21 Ms. Pittman will be in touch with you right after this call by
22 email to just make sure that there are no other kind of like
23 dates when we should not schedule the hearing between now and
24 two weeks from now. So she'll get you a date very shortly.

25 So having said that, is there anything else from

1 plaintiff's side that we need to address before we adjourn
2 today?

3 MR. LaBRIOLA: No, your Honor.

4 THE COURT: Okay. Thank you. And from the
5 defendants?

6 MR. CARTWRIGHT: No, your Honor. Appreciate your
7 time this afternoon.

8 THE COURT: Okay. Likewise. We are adjourned.
9 Thank you.

10 MR. LaBRIOLA: Thank you.

11 MR. CARTWRIGHT: Thank you.

12 (Whereupon, the proceedings were adjourned at 4:10
13 p.m.)

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REPORTERS CERTIFICATE

I, Wynette C. Blathers, Official Court Reporter for the United States District Court for the Northern District of Georgia, with offices at Atlanta, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on June 6, 2022, in the matter of D.H. PACE COMPANY, INC. v. MATTHEW JOHNSON et al., Case No. 1:22-CV-01005-SEG; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (Pages 1 through 26) is a true and accurate record of the proceedings.

This the 23rd day of June, 2022.

/s/ Wynette C. Blathers, RMR, CRR
Official Court Reporter